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ATTORNEY GENERAL OPINION By MARK BRNOVICH ATTORNEY GENERAL April 2, 2021	No. I21-002 (R21-002) Re: Whether the Arizona State Schools for the Deaf and the Blind meet federal definitions of “local educational agency”
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To: Michelle Udall
AZ House of Representatives

Question Presented

Are the Arizona State Schools for the Deaf and the Blind (“ASDB”) a local educational agency (“LEA”) under 20 U.S.C. §§ 1401(19) and 7801(30), and any associated federal regulations?

Summary Answer

The Arizona State Schools for the Deaf and the Blind meet the federal definition of “local educational agency” under 20 U.S.C. §§ 1401(19) and 7801(30).¹

¹ The opinion request clarifies that the question asked is not “whether ASDB should be eligible for any particular funding,” but “only whether ASDB is [a local educational agency] as defined by specific federal laws and regulations.” Therefore, this opinion addresses only whether the ASDB meets the definition of a “local educational agency” under the specified statutes, and not whether ASDB should qualify for related funding. The definition of local educational agency (“LEA”) becomes important because under both the IDEA and the ESEA, the U.S. Department of Education is authorized to distribute grants to the States, who can then distribute subgrants to LEAs who meet all other requirements for funding. *See* 20 U.S.C. §§ 1411, 6332; 20 U.S.C. §§ 1413, 6312; *see also* *Ariz. State Bd. For Charter Sch. v. U.S. Dep’t of Educ.*, 464 F.3d 1003, 1005–06 (9th Cir. 2006).

Background

The Arizona State Schools for the Deaf and the Blind (the “ASDB”) was created by law in 1912. *See* A.R.S. §§ 15-1301 et seq. The ASDB is a public corporation that “provide[s] schools and regional programs in appropriate locations in this state” “for the education of sensory impaired persons, so that the persons educated there may become self-sustaining and useful citizens.” A.R.S. § 15-1302(A)–(B). The ASDB functions under at least two distinct roles. *First*, the ASDB provides campus-based schools to admitted students. *See* A.R.S. § 15-1302. The ASDB currently operates schools at two campus-based locations, one in Phoenix and one in Tucson. *See About ASDB*, ASDB, <https://asdb.az.gov/about/about-asdb/> (last visited Apr. 1, 2021). The ASDB schools are “fully recognized as institutions for educational purposes.” A.R.S. § 15-1302(C). *Second*, the ASDB provides regional programs which function as a resource to local school districts. *See* A.R.S. § 15-1302(A), (D). The ASDB currently operates five regional cooperatives throughout the State which provide services to students attending local schools. *See About ASDB*, ASDB, <https://asdb.az.gov/about/about-asdb/> (last visited Apr. 1, 2021).

Analysis

The question asked considers whether the ASDB meets the definition of a “local educational agency” under two separate pieces of federal legislation: (1) the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400 et seq. and (2) the Elementary and Secondary Education Act (“ESEA”), 20 U.S.C. §§ 6301 et seq.²

² The U.S. Department of Education has enacted corresponding regulations. The regulation definitions of “local educational agency” are substantively similar to the definitions in the statutes. *See* 34 C.F.R. §§ 300.12, 300.28.

The federal definitions of LEA in both the IDEA and the ESEA encompass more than one type of entity. The IDEA defines “local educational agency” in part as follows:

(A) In general

The term “local educational agency” means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(B) Educational service agencies and other public institutions or agencies

The term includes--

- (i) an educational service agency; and
- (ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

20 U.S.C. § 1401(19).³ Because the definition of “local educational agency” in the ESEA (20 U.S.C. § 7801) is substantively similar to the definition in the IDEA, this opinion will analyze only the IDEA definition.

I. The ASDB Is A “Local Educational Agency” Under The General Definition In Subpart A.

To meet the general definition of an LEA under 20 U.S.C. § 1401(19)(A), an entity must be considered a “public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.” While this definition plainly encompasses local school districts, the Arizona statutes

³ The definition also includes a provision relating to schools funded by the Bureau of Indian Affairs, which is not at issue in this opinion.

governing the organization and functions of the ASDB indicate that the ASDB also falls under this definition.

A.R.S. § 15-1302(A)–(B) establishes the ASDB as a public corporation that “provide[s] schools and regional programs in appropriate locations in this state” “for the education of sensory impaired persons, so that the persons educated there may become self-sustaining and useful citizens.” *See also* A.R.S. § 15-1303. The regional programs serve local school districts by providing resources such as assessments, special curriculum, and equipment and materials. *See* A.R.S. § 15-1302(D) (listing additional resources the ASDB can provide). And the physical locations serve as both elementary and secondary schools, as defined by both federal and state law. *See* 20 U.S.C. § 1401(6) (“The term ‘elementary school’ means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.”); *id.* § 1401(27) (“The term ‘secondary school’ means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.”); A.R.S. § 15-101(22) (“‘School’ or ‘public school’ means any public institution established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of elementary grades or secondary grades one through twelve.”).

The ASDB is governed by a board of directors, A.R.S. § 15-1321, that is responsible for administrative functions, *see* A.R.S. § 15-1323, as well as carefully supervising “the care, education and development of pupils to insure that the best care and education known to modern science is given, as nearly as is practicable, and that the best methods of teaching the sensory impaired are used in the school,” A.R.S. § 15-1341.

Given the nature of the specialized instruction provided through ASDB schools, the ASDB is, however, unlike a local school district in some respects. For example, “evaluation and consideration of placement in the [ASDB]” is completed under the direction of an official in the school district where the child resides. *See* A.R.S. § 15-1342(A). The school district official forms a team to “determine the appropriate educational placement for the child based on the development of an individualized education program.” A.R.S. § 15-1342(B). The placement and evaluation team consists of several individuals including the child’s parent or legal guardian, an administrator from the school district in which the child resides, a certified teacher of the sensory impaired, an evaluator, and a representative of the ASDB. *Id.* The plan formulated by the team is then reviewed annually. A.R.S. § 15-1342(C). But nothing in this referral process and continued yearly review conflicts with the general definition of LEA—that is, it does not indicate that the ASDB does not have “administrative control or direction of” its schools.

Through its regional cooperatives that “perform a service function” for local school districts, and through its “administrative control or direction” of its campus-based schools, the ASDB satisfies IDEA’s general definition for an LEA. *See* 20 U.S.C. § 1401(19)(A).

II. The ASDB Is A “Local Educational Agency” Under Subpart B(i).

The ASDB also meets the federal definition of “local educational agency” under subpart (B)(i) because it is an “educational service agency.” The definition of LEA expressly includes an “educational service agency,” which is separately defined as:

a regional public multiservice agency--

- (i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and
- (ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State.

20 U.S.C. § 1401(5)(A).

In addition to its on-campus schools, the ASDB provides services to sensory impaired students in their local school districts. Statute authorizes the ASDB to provide “regional programs” and “resources to school districts, state institutions and other approved educational programs.” A.R.S. § 15-1302. Those resources include assessments, special curriculum, equipment and materials, supplemental related services, special short-term programs, program planning and staff development, information services for parents, families and the public, as well as research and development to promote improved educational programs and services. A.R.S. § 15-1302(D).

This function of the ASDB, separate from its on-campus schools, falls under the definition of “educational service agency,” which in turn is expressly included in the definition of an LEA. *See* 20 U.S.C. § 1401(19)(B)(i).

III. The ASDB Is A “Local Educational Agency” Under Subpart B(ii).

In addition to the general definition of LEA and the inclusion of an “educational service agency,” the term LEA also includes “any other public institution or agency having administrative control and direction of a public elementary school or secondary school.” 20 U.S.C. § 1401(19)(B)(ii). Under the same analysis in Section I, *supra*, the ASDB meets this section of the definition of an LEA.

Conclusion

The Arizona State Schools for the Deaf and the Blind meet the federal definition of “local educational agency” under 20 U.S.C. §§ 1401(19) and 7801(30). Whether the ASDB qualifies for funding under either Act is a separate question and not addressed by this opinion.



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